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Food & Consumer Packaged Goods Litigation

# A Fish Tale: California Court Dismisses Claim Against Sub Maker For Lack Of Specificity

**Key Takeaway:** As consumer demand for "sustainable" products grows, so does the risk of litigation challenging sustainability claims on advertising and packaging. As one recent case shows, failure to plead actual reliance can be grounds for dismissal of claims that sound in fraud, including claims under California's False Advertising Law ("FAL"), Unfair Competition Law ("UCL"), and Consumers Legal Remedies Act ("CLRA"). On October 7, 2021, the Northern District of California dismissed a suit alleging that a restaurant chain's tuna sandwiches are not "100% sustainably caught skipjack and yellow fin tuna" as advertised. The Court found that the Plaintiffs alleged the "who" (the Defendant) and the "what" (the sandwiches) but not the other elements required to meet a heightened pleading standard for claims that sounded in fraud. "Plaintiffs still need to describe the specific statements they saw and relied upon, when they saw the statements, and where the statements appeared." The Court found it fatal that Plaintiffs did not allege that "they actually read or heard any such advertising or packaging." Plaintiffs could not overcome this specificity requirement by alleging that the defendant's advertising campaign was long-running and widespread. Ultimately, the Court dismissed with leave to amend Plaintiffs' FAL, UCL, CLRA, and common law fraud claims. The Court also dismissed Plaintiffs' unjust enrichment claim as duplicative. The case is *Amin et al v. Subway Restaurants, Inc. et al.*, No. 4:21-cv-00498 (N.D. Cal. - October 7, 2021), and the Court's opinion is available [here](#).

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